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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,627	02/05/2007	David Stevenson	BARK127692	3578
26380 7590 10/23/2009 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				
EXAMINER				
HARMON, CHRISTOPHER R				
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3721				
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10/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/583,627

**Applicant(s)**

STEVENSON, DAVID

**Examiner**

Christopher R. Harmon

**Art Unit**

3721

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12, 14-19 and 21-40 is/are rejected.  
7) ☒ Claim(s) 13 and 20 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 36 is objected to under 37 CFR 1.75 as being in improper form because it depends from claim 33 which is an apparatus claim.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; see above.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Rode et al. (US 5,184,996).

Rode discloses a process and apparatus comprising assembling a collapsible closure to a container using means to move the enclosure assembly (conveyor 49); carriage comprising planar element 68 and retainer 74 to move the walls of the collapsed enclosure assembly from the storage position to the assembly position; see figures 3-5 (by engaging walls of assembly mounted to expand the assembly into a

general tubular form; and actuator comprising fingers 89 to further expand the assembly on a container by moving from a retracted position outside the tubular blank and extended position inside the tubular blank wherein the fingers 89 are driven/pivoted outwardly in order to engage each of the respective side walls of the assembly 50a in the proper fully expanded position; mounter assembly comprising opposing elements 91; see figures 1, 5, 11, and 15-24; col. 3, lines 40+. The assembly is retained as claimed by suction cups 60 and moved into position at stage 37 resting on planar elements 73 then commencing the opening procedure; see col. 2, lines 49+.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2 and 34-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rode et al. (US 5,184,996).

In the instant case that applicant does not agree that the expansion of fingers 89 perform an expanding step during their pivotal rotational movement from one orientation to another then the alternate rejection is provided:

It would have been obvious to one of ordinary skill in the art to perform an incomplete expanding operation of the assembly closures of Rode and fully expand the assemblies via fingers 89 in order to perform the transfer of enclosure assemblies more

quickly. Note that the fingers in the collapsed position are fully capable of insertion into the enclosure assemblies well before expanding to a fully expanded state.

Regarding claim 39, see below.

8. Claims 3-12, 14-19, 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rode et al. (US 5,184,996) in view of Wingerter (US 5,393,291).

The conveyor 49 of Rode et al. delivers collapsed assemblies 50 to unfolding station 37. There is no discussion of where the collapsed assemblies 50 arrive from.

Wingerter teaches an inclined hopper/chute for storing blanks before feeding to an erector comprising parallel side walls 56 for holding the blanks in a substantially upright position held in position by opposing pusher plate and end wall 140; see figures 4-5. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the chute of Wingerter in the invention to Rode et al. for efficient storing and loading of the device.

Regarding claim 8, the examiner takes OFFICIAL NOTICE that "walking beam type" conveying means in hopper chutes are well known in the art and are capable of operation as claimed. It would have been obvious to one of ordinary skill in the art to use a walking beam type conveyor in a hopper chute in the modified invention to Rode for supplying box blanks.

Regarding claim 12, planar element(s) 68 are movable on guide rails 69.

Regarding claims 16-19, 21-23, actuator fingers 89 are positionable/rotatable between first and second orientations as claimed on shafts/pins 95 (perpendicularly aligned with the axes of the shafts) to retain the enclosure assembly on second

planar/plate elements 91 which are moveable between positions as claimed; see figures 18-20.

Regarding claim 24, it would have been obvious to one of ordinary skill in the art to provide two fingers for the second planar element(s) 91 since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claims 27-30, Rode does not directly disclose a container storage assembly (only conveyor 42 for delivering containers 47 to a position under the expanded enclosure assembly). The examiner takes OFFICIAL NOTICE that vertical stack container storage assemblies are well known in the art. It would have been obvious to one of ordinary skill in the art to provide a container storage assembly for holding the containers prior to delivery to conveyor 42 (ie. distal to the assembly position).

9. Claims 31-33 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rode et al. (US 5,184,996) in view of Curtis (US 3,634,995).

Rode et al. do not disclose using a lift for raising container to the enclosure assembly however Curtis provides hydraulic lift 98 with pivot arm 400 for raising containers to lid enclosures. It would have been obvious to one of ordinary skill in the art to provide the lift of Curtis in the invention to Rode et al. for ensuring accurate and quick placement of enclosure assemblies on containers.

***Allowable Subject Matter***

10. Claims 13 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher R Harmon/  
Primary Examiner, Art Unit 3721